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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,576	10/02/2003	Nancy C. Kerrigan	079793.00004	9299

7590 07/12/2005

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EXAMINER	
ALIMENTI, SUSAN C	

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/677,576	KERRIGAN, NANCY C.	
	Examiner	Art Unit	
	Susan C. Alimenti	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 April 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 2, and 4-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Raymond (US 3,173,398).

Raymond discloses a pet rest and recreation apparatus comprising an elevated rest space 18, steps 17 leading to the rest space 18 and defining a storage area beneath it. Rest space 18 comprises a mattress pad 31 for the animal's comfort, and is surrounded by side 25-27 wherein each side has a handle or aperture therein. Applicant "rest area" in claim 1 and "storage space" in claim5 *reads* on the space or area underneath Raymond's rest space 18.

In the alternative, if one were to contend that element 16 and its ribbed nature is not considered steps, the examiner takes Official Notice that structure 16 is equivalent in the art to steps and would be an obvious replacement, not in any way changing the scope of the invention.

6. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 5,964,189).

Northrop et al. (Northrop) discloses a pet rest and recreation apparatus comprising an elevated rest space 48 disposed atop a storage area 44, and a ramp 80 for access to the rest space 48. While Northrop does not positively disclose stairs, a ramp and stairs are well-known equivalent structures in the art. The examiner takes Official Notice that it would have been obvious to replace Northrop's carpeted ramp 80 with carpeted stairs since both are known for their equivalent use, and the selection of these would be within the level of ordinary skill in the art.

Regarding claims 3 and 8, storage area 44 is considered to be a closet.

Regarding claims 7, 12 and 13, the ramp 18 and rest space 48 are covered in carpet. Northrop, col.8, lns.10-11, 51-53.

Regarding claims 4 and 9, rest space 48 is surrounded by sides 114 and 43, and the edge of side 43 is considered to be a handle.

Regarding claims 6, 11, and 13, Northrop teaches that rest space 48 may be covered with "other soft flooring material," this is considered to comprise a pet mattresses. Northrop, col.7, lns.62-65. It would have been obvious to one having ordinary skill in the art to place a mattress pad on space 48 since such an addition is well-known in the art in order to provide extra comfort to the pet, and such a modification would not alter the scope of the invention.

Regarding claim 10, the area under ramp or stairs 80 is defined as a storage space.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop as applied to claims 1-13 above, and further in view of Baiera et al (D413,415).

Northrop, as modified, discloses the claimed invention except there is no pole horizontally traversing storage space 44. Northrop does teach that a variety of pet toys are "suitable for mounting to the cat playhouse." *Northrop*, col.9, lns.25-28. Baiera et al. teaches a pet toy mountable to a sidewall, comprising a horizontal pole having a cat amusing device tethered thereto. It would have been obvious to mount Baiera et al.'s pet amusement device to the sidewall of Northrop's playhouse so that the pole segment traverses the storage space 44, in order to provide a toy for the cat.

Response to Arguments

8. Applicant's arguments filed 4/182005 have been fully considered but they are not persuasive. The crux of applicant's arguments is that Raymond and Northrop neither teach nor suggest providing a storage space integrated with a pet rest space. The examiner respectfully disagrees. It is first pointed out that the definition of "storage," as set forth by Merriam Webster's Dictionary, 10th Ed., is "a space or place for storing." Second, in apparatus claims the prior art must only be capable of providing limitations set forth in the claims. In Raymond, the area or space underneath rest 30 reads on a storage space such that any material or box may be placed there for an extended period of time, i.e. for storage.

Similarly, regarding Northrop it is noted that the definition of a "closet" according to Webster's, is at least, "a place of retreat or privacy," or a "cabinet or recess." Clearly Northrop's housing 22 satisfies the limitation of a "closet." It is irrelevant what Northrop teaches the closet as being used for, as long at it is capable of being a "closet" the metes and bounds of the claim are satisfied.

Further, the claimed limitation "a storage area" indicates intended use of the area or space. Applicant is reminded that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See: In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP 2114 which states:

> A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the *structural* limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).
>
> While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997), see also: In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).
>
> "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

In conclusion the examiner maintains the rejection, for these and the reasons listed in the rejections above.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Behrend can be reached on 571-272-6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

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